

JS 44
(Rev. 3/99)**CIVIL COVER SHEET**

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM)

I. (a) PLAINTIFFS

Tenet Hospitals, Limited, d/b/a Doctors Hospital of Dallas; Tenet Healthsystem Hospitals, Dallas d/b/a RHD Memorial Medical Center and Trinity Medical Center

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Dallas
(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTS

Texas Health Choice, L.C.

3-02CV1940-N

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT Dallas
(IN U.S. PLAINTIFF CASES ONLY)

NOTE IN LAND CONDEMNATION CASES USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(C) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

See attached.

ATTORNEYS (IF KNOWN)

See attached.

II. BASIS OF JURISDICTION

(PLACE AN "X" IN ONE BOX)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

(PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- Citizen of This State ☐ 1 ☐ 1 incorporated or Principal Place of Business In This State ☐ 4 ☐ 4
Citizen of Another State ☐ 2 ☐ 2 Incorporated and Principal Place of Business In Another State ☐ 5 ☐ 5
Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 Foreign Nation ☐ 6 ☐ 6

IV. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input checked="" type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence HABEAS CORPUS: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS -Third Party 26 USC 7609

V. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 Original Proceeding
☒ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

Lawsuit filed over insurance claims of Texas Health Choice enrollees who receive coverage under the federal Medicare program and enrollees covered by the Federal Employee Health Benefits Program. Case is removed pursuant to 42 U.S.C. Section 1395, et seq.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER FRCP 23 ☐

DEMAND \$ To be established

CHECK YES only if demanded in complaint
JURY DEMAND: ☐ YES ☒ NO

VIII. RELATED CASE(S)

(See instructions):

IF ANY No related cases.

JUDGE

DOCKET NUMBER

DATE

9/9/02

SIGNATURE OF ATTORNEY OF RECORD

Penny Hobbs

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG JUDGE _____

Attachment to Civil Cover Sheet JS-44

Tenet Hospitals, Limited, d/b/a Doctors Hospital of Dallas, et al. v. Texas Health Choice, L.C.

I.(c) Plaintiffs' Attorneys:

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Defendant's Attorneys:

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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

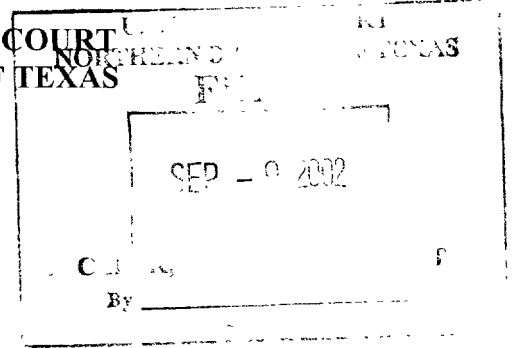
TENET HOSPITALS, LIMITED, d/b/a)
DOCTORS HOSPITAL OF DALLAS;)
TENET HEALTHSYSTEM HOSPITALS,)
DALLAS, INC., d/b/a RHD MEMORIAL)
MEDICAL CENTER and TRINITY)
MEDICAL CENTER,)

Plaintiffs,)

v.)

TEXAS HEALTH CHOICE, L.C.,)

Defendant.)



3-02CV1940-N

Civil Action No. _____

NOTICE OF REMOVAL OF CIVIL ACTION

Defendant Texas Health Choice, L.C. ("THC"), submits this notice of removal of this civil action from the J-191st District Court of Dallas County, Texas, to the United States District Court for the Northern District of Texas pursuant to 28 U.S.C. § 1441, *et seq.* The grounds for removal are as follows.

Background

1. Plaintiffs Tenet Hospitals, Limited, d/b/a Doctors Hospital of Dallas, and Tenet Healthsystem Hospitals, Dallas, Inc., d/b/a RHD Memorial Medical Center and Trinity Medical Center (the "Hospitals"), are participating providers that provide hospital services to enrollees of THC.

2. At all times relevant to this lawsuit, THC had, and is still subject to, a Medicare+Choice contract with the federal Centers for Medicare & Medicaid Services pursuant to Title 42, Part 422, Code of Federal Regulations.

3. In addition, at all times relevant to this lawsuit, THC was a contracting carrier under the Federal Employees Health Benefits Program.

4. This action involves claims by the Plaintiff Hospitals for payment for services provided to THC enrollees who receive their health insurance coverage through the federal Medicare+Choice program and of THC enrollees covered by the Federal Employee Health Benefits Program. (See Affidavit of David Marlon, a copy of which is attached to this notice behind Tab 5.)

Exclusive Federal Jurisdiction for Medicare Claims

5. Because this matter involves Medicare claims, the state court does not have jurisdiction. Federal courts have exclusive jurisdiction under the Medicare Act, 42 U.S.C. § 1395, *et seq.*

6. Claims relating to the disposition of Medicare or Medicare+Choice benefits are subject first to an administrative exhaustion requirement, and then to judicial review solely in federal court. *See* 42 U.S.C. § 405(g). This process—exhaustion of federal administrative remedies followed by judicial review in federal court—“is the sole avenue for judicial review of all ‘claim[s] arising under’ the Medicare Act.” *Heckler v. Ringer*, 466 U.S. 602, 614-15 (1984).

7. Under applicable federal regulations, the Hospitals’ claims for payment against THC are as “assignees” of THC’s Medicare members’ benefits. The exclusive federal dispute-resolution process for Medicare claims specifically contemplates disputes brought by “[a]n assignee of the [Medicare] enrollee (that is, a physician or other provider who has furnished a service to the enrollee and formally agrees to waive any right to payment from the enrollee for that service).” 42 C.F.R. § 422.574.

8 Because the Hospitals' allegations concern benefits under the federal Medicare program, their claims must be determined under the federal statutory scheme established for review of Medicare-related claims by carriers, the Secretary of Health and Human Services, and the federal district courts under the Medicare Act. "Congress provided elaborate review provisions to be used by parties dissatisfied with the initial disposition of their Medicare claims." *Bodimetric Health Servs., Inc. v. Aetna Life & Cas. Co.*, 903 F.2d 480, 483 (7th Cir. 1990). The review provisions are codified in two sections of the Social Security Act.¹

9. The first provision, 42 U.S.C. § 405(g), provides the basis for all judicial review of Medicare benefit claims. It states that judicial review of Medicare claims shall be available only after the Secretary of Health and Human Services renders a final decision on the claim,² ***and then only in a federal district court.*** See 42 U.S.C. § 405(g). In *Ringer*, the Supreme Court explained that the final decision requirement consists of two elements—(1) "presentment," a nonwaivable, jurisdictional prerequisite that a benefits claim must be presented to the Secretary of Health and Human Services, and (2) "exhaustion," a prerequisite, waivable by the Secretary, that a claimant fully pursue all available administrative remedies before seeking judicial review. 466 U.S. at 617. See also *Mathews v. Eldridge*, 424 U.S. 319 (1976). The administrative remedy procedure that must be followed for claims for a Medicare participant enrolled in a Medicare+Choice plan is set out at 42 C.F.R. § 422.560, *et seq.*

¹ The Medicare Act expressly provides that the review provisions from the Social Security Act are applicable to managed care organizations such as defendants, and that any reference to the "Commissioner of Social Security" or the "Social Security Administration" in section 405(g) shall be considered a reference to the "Secretary" or the "Department of Health and Human Services," respectively. See 42 U.S.C. §§ 1395ff(b)(1), 1395jj.

² Before Medicare claims reach the administrative mechanisms established within the Department of Health and Human Services, the claimant must first pursue the appropriate grievance procedures provided by the carrier. See, *e.g.*, 42 C.F.R. §§ 422.560 *et seq.*

10. The second statutory review provision, 42 U.S.C. § 405(h), further restricts the availability of judicial review for Medicare-related claims. It states that “[n]o findings of fact or decision of the Commissioner of Social Security shall be reviewed by any person, tribunal, or governmental agency except as provided herein.” *Id.* It further states that no action shall be brought against “the United States, the Commissioner of Social Security, or any officer or employee thereof . . . under section 1331 or 1346 of title 28 to recover on any claim arising under this [subchapter].” *Id.*

11. The Supreme Court, reading these provisions in conjunction with one another, has held that 42 U.S.C. § 405(g) “is the sole avenue for judicial review of all ‘claim[s] arising under’ the Medicare Act.” *Ringer*, 466 U.S. at 614-15. The Supreme Court has instructed courts to apply the term “arising under” broadly to channel any claim that is “inextricably intertwined” with claims for the payment of Medicare benefits into the exclusive Medicare dispute resolution process. *See Ringer*, 466 U.S. at 615, 624; *Weinberger v. Salfi*, 422 U.S. 749, 760-61 (1975). Only claims found to be “wholly collateral” to claims for Medicare benefits are exempt from the requirement that they be adjudicated through the exclusive review scheme established by 42 U.S.C. § 405(g) and 405(h). *See Ringer*, 466 U.S. at 615 (“It is of no importance that respondents here . . . sought only declaratory and injunctive relief and not an actual award of benefits as well.”).

12. State law claims by providers that are fairly characterized as challenges to the amounts paid for services provided to Medicare beneficiaries are barred. *See Midland Psychiatric Assoc., Inc. v. United States*, 145 F.3d 1000, 1005 (8th Cir. 1998) (Medicare provider’s state law claim for tortious interference with contract would entangle the court in redetermining a Medicare claims decision and therefore “arose under” the Medicare Act);

Bodimetric Health Servs., 903 F.2d at 487. In *Bodimetric*, plaintiffs asserted state-law claims against an insurer participating in the Medicare program that were similar to those at issue here, including allegations of fraud, negligence, breach of contract, breach of implied covenant of good faith and fair dealing, and breach of fiduciary duty. The court determined that such allegations were actually based on alleged misconduct in processing Medicare claims for reimbursement. As such, the claims arose under the Medicare Act and were required to be adjudicated in federal court pursuant to the Medicare Act's exclusive dispute resolution process.

13. The case of *Lifecare Hospitals, Inc. v. Ochsner*, 139 F. Supp. 2d 768 (W.D. La. 2001), is directly on point. The plaintiff brought an action in state court against an HMO that provided a Medicare+Choice plan to recover amounts owed for hospital services. *Id.* at 770. The defendant removed to federal court and expressly reserved the right to seek dismissal for lack of subject matter jurisdiction pursuant to section 405(g) of the Medicare Act based on Lifecare's failure to exhaust administrative remedies. The *Lifecare* court accepted removal and determined that despite being couched as a state law contract action, the plaintiff's claims were, "at bottom, claims for reimbursement for benefits provided to enrollees in [defendant's] plan." *Lifecare Hospitals*, 139 F. Supp. 2d at 772. Accordingly, the claims were "inextricably intertwined with claims for benefits," and the court held that they arose under the Medicare Act. *Id.*

14. For removal considerations, these cases all share the same dispositive characteristic: the plaintiffs attempted to present claims for Medicare benefit reimbursement as state law causes of action. In each case, however, the reviewing court discerned the true nature of plaintiffs' claims, and held them to be governed by the exclusive review scheme established for claims arising under the Medicare Act. As the Seventh Circuit aptly stated:

A party cannot avoid the Medicare Act's jurisdictional bar simply by styling its attack as a claim for collateral damages instead of a challenge to the underlying denial of benefits. If litigants who have been denied benefits could routinely obtain judicial review of these decisions by recharacterizing their claims under state and federal causes of action, the Medicare Act's goal of limited judicial review for a substantial number of claims would be severely undermined.

Bodimetric Health Servs., 903 F.2d at 487; *see also Lifecare Hosp., Inc. v. Ochsner Health Plan, Inc.*, 139 F. Supp. 2d 768, . Plaintiffs' state-law claims in this case are intertwined with payments for Medicare benefits. They are therefore subject to exclusive federal jurisdiction.³

Federal Question Jurisdiction

15. Additionally, this Court has federal-question jurisdiction regarding the claims for services provided to persons covered by the Federal Employees Health Benefits Program. The resolution of such claims is governed by federal law. *See* 5 U.S.C. § 8901 *et seq.* Regulations adopted by the Office of Personnel Management, pursuant to 5 U.S.C. § 8913 set forth an administrative procedure for resolving disputed claims. *See* 5 C.F.R. § 890.105.

16. This Notice of Removal is being filed within 30 days of the service of Plaintiffs' Original Petition upon THC, pursuant to 28 U.S.C. § 1446(b).

17. Pursuant to Local Rule 81.1(3) of the United States District Court of the Northern District of Texas, the following documents are attached to this notice:

1. Index of Documents attached, including the description of documents filed in the state court action, and the date on which documents were filed in state court.

³ Because this Court has proper jurisdiction over Plaintiffs' Medicare-related claims, it may exercise supplemental jurisdiction over any non-Medicare-related claims pursuant to 28 U.S.C. § 1367.

2. True and correct copies of the entire record in the state court action, including all process and pleadings served or filed in the state court action as of the time of filing of this removal (arranged chronologically behind Tabs 1 and 2).
3. True and correct copy of the docket sheet in the state court action (behind Tab 3).
4. Certificate of Interested Persons (behind Tab 4).

18. True and correct copies of a separate Notice to State Court of Removal of Civil Action will be served upon the Hospitals' counsel and filed with the clerk of the District Court of Dallas County, Texas, pursuant to 28 U.S.C. § 1446(d).

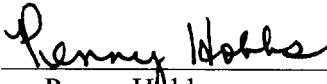
19. In filing this notice, Defendants do not waive any defenses available to them in this action.

20. THC reserves the right to move to dismiss this suit, based on the Hospitals' failure to exhaust the administrative remedies applicable to Medicare claims and to claims of persons covered by the Federal Employees Health Benefits Program; however, those claims are removable to this Court, subject to the motion to dismiss.

WHEREFORE, Texas Health Choice, L.C., respectfully gives notice to this Court of the removal of this action from the District Court of Dallas County, Texas to this Court in accordance with the foregoing legal authorities.

Respectfully submitted,

MCGINNIS, LOCHRIDGE & KILGORE, L.L.P.
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(512) 495-6000
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By: 
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Counsel for Defendant Texas Health Choice, L.C.

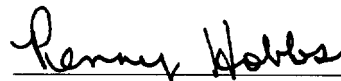
OF COUNSEL:

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CERTIFICATE OF SERVICE

I hereby certify that, on the 9th day of September, 2002, a true and correct copy of the above and foregoing Notice of Removal was served by certified mail, return receipt requested, on the following:

James E. Gjerset
Gjerset & Lorenz, L.L.P.
2801 Via Fortuna, Suite 500
Austin, Texas 78746


Penny Hobbs